IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

FIRST APPEAL NO.246 OF 1989

The General Manager
Maharashtra State Road Transport
Corporation, Bombay ... Appellant

V/s.

1. Smt.Ranjana Mohan Manorkar
2. Kum.Shila Mohan Manorkar
3. Vilas Mohan Manorkar
4. Rajan Mohan Manorkar
5. Pravin Mohan Manorkar
all residents of Khend-Mirjoli
Tal.:Chiplun, Dist.: Ratnagiri ... Respondents

Mr.C.M. Lokesh i/b G.S. Hegde for Appellant
Mr.S.M. Railkar with G.R. Rege for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 15, 2004**

ORAL JUDGMENT:

. The First Appeal has been filed against the judgment and order of the Accident Claims Tribunal, Ratnagiri by which the respondents-claimants had been awarded Rs.75000/- alongwith interest @ 12% per annum on account of the death of the one Mohan Gopal Manorkar in a road accident. Respondent No.1 is the wife of Mohan Gopal Manorkar. Respondent Nos.2 to 5 are the children of the deceased.

2. The deceased while riding his bicycle met with

an accident on 15.11.1986 on the Bombay-Goa road at Chiplun where a State Transport bus bearing No.MTF-9976 dashed into him. The deceased, because of the impact, was thrown about 14’ to 15’ ahead of the bus. He sustained severe injuries requiring him to be hospitalised. Initially, he was admitted to a hospital at Chiplun and thereafter under medical advice, he was moved to Krishna Charitable Hospital at Karad on the same day. However, he succumbed to the injuries sustained by him, on 17.11.1986. The respondents, therefore, preferred a claim under the Motor Vehicles Act claiming compensation of Rs.150000/-. According to the respondents, they spent around Rs.3500/- towards the medical treatment and conveyance. The respondents based their claim on the fact that the deceased was earning around Rs.1200/- per month.

3. Written statements were filed by both the State Transport Corporation and the bus driver. The State Transport Corporation contended that the deceased turned his cycle to the right side in order to overtake the bus when he noticed a scooter which was approaching from the opposite side in a high speed, requiring the cyclist to swerve back, behind the bus. Due to this, he dashed against the bus. The written statement filed by the driver gives a different view of the accident. According to the driver, the deceased turned towards the

bus stand on right side of the road and dashed against the bus. There is no mention of any scooterist approaching from the opposite direction due to which the cyclist had to swerve towards the bus.

4. Evidence was led before the Motor Accident Claims Tribunal. Panchanama brought on record indicated that the deceased was thrown about 14’ to 15’ ahead of the bus. The evidence led on behalf of the claimants by Respondent No.4 establishes that the deceased was earning around Rs.1200/- per month as a repairer of weights and measures. He had been given a licence by the Deputy Controller of Weights and Measures. Respondent No.4 has also stated in his evidence which is unshaken in the cross-examination that the family was required to spend Rs.4000/- for shifting the deceased from Chiplun to Karad for medical treatment. Neither the State Transport Corporation nor the bus driver led any evidence to demonstrate as to how the accident had occurred.

5. The Claims Tribunal has concluded that the accident occurred due to the impact of the front of the bus on the cycle which threw the deceased about 14’ to 15’ ahead of the bus. The Tribunal has also considered the fact that although no documentary evidence was brought on record to establish that the deceased was

earning around Rs.1200/- per month, the evidence of Respondent No.4 could not be discarded as there was no contrary evidence led on behalf of the driver. Furthermore, the Claims Tribunal has considered the fact that the amount spent on the transportation and conveyance for medical treatment also could not be discarded as there was no evidence in rebuttal in respect of this issue on record. Taking all these factors into consideration, the Tribunal has held that the respondents were entitled to Rs.75,000/- as compensation alongwith interest @ 12% from the date of its order.

6. Mr.Lokesh, learned Advocate for the Appellants, submits that this was a case of contributory negligence and, therefore, the Tribunal ought not to have arrived at the conclusion that the claimants were entitled to Rs.75,000/- as compensation. He submits that it was only because of the wayward riding of the deceased that he met with an accident on the fateful day. The learned Advocate also submits that there was no evidence before the Tribunal to conclude that the sum of Rs.3500/- has been spent on conveyance; nor was there any evidence in support of the fact that the deceased was drawing around Rs.1000 to Rs.1200 per month as his income. He submits that in such circumstances, the Tribunal ought not to have granted the compensation of Rs.75,000/-. He urges

that the interest awarded is also very high as the Tribunal has directed payment of interest @12% per annum if the amount awarded was not deposited within one month of the date of the order, ie., one month from 27.9.1988.

7. Mr.Railkar, learned Advocate for the Respondents, submits that the Tribunal has rightly considered the evidence on record. The oral evidence led by Respondent No.4 is unshaken in the cross-examination and therefore, has been accepted by the trial Court. He further submits that there is no contrary evidence to show that the deceased was not earning Rs.1200/- per month or that the amount spent on conveyance for shifting the deceased to Karad from Chiplun was not Rs.3,000/-. In such circumstances, according to the learned Advocate, no fault can be found with the judgment of the trial Court and the appeal should be dismissed.

8. The trial Court has considered the fact that the the accident has occurred when the cyclist and the bus owned by the State Transport Corporation were proceeding in the same direction. The impact occurred because the bus rammed into the rear of the bicycle, throwing the deceased about 14’ to 15’ ahead of the bus. The Tribunal has rightly held that the evidence of the driver would have been the best evidence since there was

no other eye witness of the accident. The driver having not chosen to depose before the Tribunal has rightly drawn adverse inference against the driver as well as the Corporation. Therefore, the accident has occurred on account of the rash and negligent driving of the driver. There is no question of any contributory negligence on the part of the deceased.

9. The submission made by the learned Advocate for the Corporation that the claimants were not able to establish that the deceased was earning around Rs.1200 per month also cannot be considered. The evidence led on behalf of the respondents clearly establishes that this was the amount which the deceased was earning. Although there was no documentary evidence on record, the appellant has not challenged the quantum at all in the cross examination of Respondent No.4 nor has it led any independent evidence to establish that the deceased was not earning this amount as claimed by the respondents. Furthermore, there is nothing on record to indicate that the amount spent as stated in the examination in chief of Respondent No.4 on conveyance for medical treatment was not in fact spent. There is no evidence led in rebuttal nor are any questions put to respondent No.4 in cross examination relating to this issue. Therefore, the trial Court has rightly accepted the monthly earning of the deceased as Rs.1000 to

Rs.12000/- and that Rs.3500/- was spent on conveyance from Chiplun to Karad.

10. The learned Advocate for the appellant submits that assuming the deceased was in fact earning Rs.1200/- per month, it was necessary for the Court to deduct 1/3rd from this amount towards the expenses which the deceased would have incurred for himself. He submits that if that amount is deducted the compensation payable would be much less.

11. The trial Court has considered all the necessary factors while awarding compensation of Rs.75,000/-. In my view, there is no need to interfere with the award of the trial Court. The submission of the learned Advocate for the Appellant that the interest be reduced also cannot be accepted. The amount of 12% p.a. as interest from the date of the order i.e., 27.9.1988 cannot be said to be unreasonable and, therefore, there is no need to interfere with the award.

12. According to Mr.Lokesh, no-fault liability of Rs.1075/- must have been paid by the appellants to the respondents. However, there is nothing on record to show that this amount has been paid to the respondents. The judgment and order of the Tribunal also does not disclose that the amount of Rs.75,000/- was being

awarded apart from any amount paid to the respondents as no-fault liability.

13. In view of this, there is no need for any further clarification. First Appeal is dismissed. No order as to costs.

GPN-J-602-ARHCB-12-97-31,000-PA4 [Spl.-H.C.A.S.D.D. 28e. G.R., J.D., No.4398, dated 3-7-16

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

FIRST APPEAL NO.246 OF 1989

Date of Decision: OCTOBER 15, 2004

Transcript of JUDGMENT submitted on:

For Approval and Signature:-

THE HON'BLE **SMT. JUSTICE NISHITA MHATRE**

1. Whether Reporters of Local Papers may be allowed to see the Judgment?)
2. To be referred to the Reporters or not?)
3. Whether Her Ladyship wishes to see the fair copy of the Judgment?)
4. Whether this case involves a substantial question of law as to the interpretation?)
5. Whether it is to be circulated to the Civil Judges?)
6. Whether the case involves an important)

question of law and whether a copy of)
the judgment should be sent to the)
Nagpur, Aurangabad & Goa offices?)